IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No. 1497 of 2006
with
Civil Application No.1050 of 2007

The Municipal Corporation of
City of Thane ..Petitioner

vs.

Kolshet Gramastha Mandal
and another ...Respondents

Shri R.S.Apte for petitioner.
Shri V.A.Thorat, Sr.Counsel with Shri Vaibhav Sugdare i/b Shri Basant Tilokani for respondent nos. 1 and 2.

CORAM: S.C.DHARMADHIKARI J.
26th April, 2007

P.C.

1. This writ petition is directed against the order passed by the lower Appellate Court dismissing the appeal preferred by the petitioner Corporation against the order dated 13th December, 2005 which was passed below Exh.5 in Reg.Civil Suit No.645 of 2005.

2. By this order, the IIIrd Joint Civil Judge, Jr.Dn., had restrained the petitioner Corporation from dumping any garbage and waste material on the entire suit property till final decision of the suit.

3. Aggrieved by this order, the appeal came to be

preferred and the learned District Judge while confirming this order has granted the petitioner some time to clear the property/site of garbage which has been dumped. In addition, the order of the learned District Judge dismissing the appeal was suspended by him till 7th March, 2006.

4. This Court had while issuing notice on the petition directed that status quo should continue.

5. This matter was argued before me at length on 2nd March, 2007 and my order records that the petitioner Corporation desired some time to enable it to make alternative arrangement for dumping municipal garbage and till such time i.e. for temporary period they should be allowed to use a portion of the property admeasuring 3 acres for dumping garbage. At that stage learned Senior Counsel Shri Thorat appearing for the respondents sought time to respond to the subsequent developments which had taken place after the order passed by the lower Appellate Court and the suggestion/request of the Corporation.

6. Having heard the learned Counsel for the parties at length, I am of the view that this is not a fit case for interferring with the concurrent findings of the Courts below recorded at the interlocutory stage. More so, when these findings are based upon materials produced by both

sides.

7. In a suit which is filed by the residents of the locality, the courts below found prima facie that the property covered by the suit has been earmarked and designated for the use as a park. Such a site cannot be used by the Planning Authority i.e. Municipal Corporation as a dumping ground. Apart from this, the materials have been produced to show that such a usage, namely, of dumping garbage and municipal solid waste in the suit property has become a cause of nuisance to the plaintiff and other persons residing in the vicinity. Similarly, it is found to be hazardous as well.

8. The Trial Court’s finding has been referred to in the order of the learned District Judge and in para 9 of his order he has referred to the report of the Maharashtra Pollution Control Board. It shows that the averments in the plaint and allegations made in the injunction application are substantiated at this prima facie stage.

9. In such circumstances and when prima facie conclusion is that the act of the petitioners/original defendants is illegal and improper, then, this is not a case for interference by this Court.

10. On all three grounds, namely, prima facie case,

balance of convenience and irreparable loss there are concurrent findings recorded against the petitioners.

11. Despite all persuasive efforts of Shri Apte I am unable to interfere with the same. Consequently, I am of the view that the jurisdiction of this Court under Article 227 of the Constitution of India cannot be exercised to interfere with the impugned orders as they are not found to be suffering from any errors apparent or perversity.

12. As far as the alternative submission of Shri Apte requesting for permission to temporarily dump the garbage at the suit site is concerned, the statements made in the affidavit of Dr.Ramrao Tukaram Kendre have been denied in the further affidavit filed on behalf of Respondent no.2.

13. Shri Thorat has brought to my notice the fact that presently no garbage has been dumped at the suit site. The order dated 2nd March, 2007 proceeded on the basis that garbage was in deed being dumped at the suit site. That is how the question of granting some temporary relief to the petitioners arose for consideration.

14. Now, on affidavit it has been pointed out that the property in question has not been used for the purpose of dumping garbage. In any event, it is not disputed that the petitioner Corporation has an alternative site

available at Diagher. All that is required to be done for using the said site as a dumping ground is to have approach or access road there. The affidavit discloses that after the possession of the alternative site has been taken over by the Corporation it has moved the State Govt. for making available the approach road or access to the said property. In such circumstances, it would not be proper to allow the petitioner to dump the garbage at the site reserved for the use of the public as a park. That would be defeating the purpose of reservation. When I am not interferring with the order passed by the Courts below and when prima facie it is found that the usage is illegal it would not be proper now to permit the petitioner to dump the garbage even temporarily at the suit site.

15. In such circumstances, even alternative submission of Shri Apte cannot be accepted.

16. Writ Petition, therefore, fails and is hereby dismissed with no order as to costs.

17. Civil Application No.1050 of 2007 preferred for intervention does not survive in the light of the above order.

18. However, it would be fair, just and proper to direct the lower Court to expedite the hearing of Reg.Civil Suit

No.645 of 2005 and to endeavour and dispose of the same within a period of six months from today. Needless to state that all observations made by the Courts below in their orders are tentative and prima facie. They are made for the purpose of consideration of an application for temporary injunction and shall not influence the Courts below while trying the suit.

(S.C.DHARMADHIKARI J.)